

April 20, 2000

Filed Electronically

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, N.W.
Washington, D.C. 20554

Ex parte: GTE Corp. and Bell Atlantic Corp., CC Docket No. 98-184

Dear Ms. Roman Salas:

On Wednesday, April 19, CPI Executive Director Debra Berlyn and James L. Casserly, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., met with Johanna Mikes and Julie Patterson of the Policy Division of the Common Carrier Bureau. Ms. Berlyn and Mr. Casserly presented CPI's views of the above proceeding and summarized reply comments CPI filed. They also reviewed major points contained in a one-page summary of CPI's view of the above proceeding and recent *ex parte* proposals. The one-page summary paper is included with this *ex parte* notice.

Pursuant to Commission rules, this notice and attachment are being filed with the Office of the Secretary.

Sincerely,

/s/

Debra Berlyn
Executive Director

➤ **Bell Atlantic and GTE cannot lawfully merge so long as GTE provides interLATA services in in-region states for which Bell Atlantic has not received §271 authority.**

— **Legal Basis:** The statutory requirements are clear. With limited exceptions, it is unlawful for a Bell Operating Company to provide interLATA service in an “in-region” state before the Commission has found that the BOC has met the requirements of 47 U.S.C. §271. This provision applies whether the service is provided with facilities owned originally by the BOC or acquired in a merger. The statute does not distinguish between voice and data services: it applies to *interLATA* services.

§271 occupies a specially protected place in the statute. Of all the provisions in the 1996 Act, Congress denied the Commission authority to waive the requirements of only two: §251(c) and §271.

— **Policy Basis:** Section 271 provides BOCs with strong incentives to comply with the market-opening provisions of the 1996 Act. Permitting a BOC to evade the requirements of §271 extinguishes those incentives. The growth of interLATA data traffic, especially compared to voice traffic, means the incentive (and the damage from waiving it) is growing in importance. The Commission should remain consistent with its previous actions that prevented BOCs from evading the requirements of section 271:

- Denial of LATA boundary changes sought by U S WEST in Minnesota and Arizona;
- Disallowance of joint marketing arrangements between Qwest and two RBOCs;
- Denial of petitions for interLATA data relief sought in the section 706 inquiry;
- Scrutiny of the proposed divestiture in the Qwest/U S WEST merger proposal.

➤ **GTE’s restructuring proposal for Genuity violates the letter and the spirit of §271.**

- GTE retains ownership and control of Genuity through numerous mechanisms, making Genuity an “affiliate” under §271;
- Being able effectively to provide interLATA data services through Genuity greatly reduces Verizon’s incentive to comply with market-opening provisions of §251.

➤ **What is needed.**

The merger partners have the same options as any other companies in similar circumstances: 1) obtain §271 approval for all in-region states; 2) cleanly divest the interLATA business (as Qwest is doing); 3) abandon the proposed merger.

If GTE wishes to propose an arrangement with an option to recapture Genuity, the proposal must meet three qualifications: 1) Verizon cannot own more than ten percent or control Genuity (directly or indirectly) prior to obtaining §271 approvals; 2) the price paid at recapture must reflect the then-current market value of Genuity; 3) Verizon’s incentive to comply with §251 should not be substantially diminished during the period before recapture.